Supreme Court, U.S.
FILED

No. 04 272 MAY 27 2004

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

YOUNG J. PARK
Petitioner

v.

THE STATE BAR OF CALIFORNIA, a California Corp.;
JEROME SIDNEY BRAUN;
And DOES 1-20, inclusive,
Respondents

On Petition For Writ Of Certiorari
To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Pro Se Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Can any powerful state officials have the rights to tromp or stomp the express provisions of criminal and civil federal statutes, U.S. Supreme Court precedents or U.S. Constitution within its boundaries when the Supremacy clause states otherwise?

2. Can California request state court to regulatorily take citizens' property to prevent citizens from disclosing California's violations of federal laws?

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WHY REVIEW SHOULD BE GRANTED

The *Lopez* court noted:

> [R]efusing to obey the decisional law . . . is akin to the repudiated pre-Civil War doctrine of nullification whereby rebellious states refused to recognize certain federal laws within their boundaries. . . . The government expects its citizens to abide by the law-no less is expected of those charged with the duty to faithfully administer the law.

Lopez v. Heckler, 713 F.2d at 1441 (1983)

In *Lopez*, state officials had tromped or stomped the federal decisional law. Unless the court had heard the case, the court might not have known of state officials' tromping of the federal law within its boundaries.

In the present case, state officials have tromped federal laws, including U.S. Supreme Court precedent, even further. In addition, state decisions show the state's intention to take personal property away against the express provisions of the statute when citizens assert their federal rights. It is a regulatory taking in violation of the Taking Clause of the Fifth Amendment to the U. S. Constitution.

Here, the California State Bar ("California") admitted that it had violated the criminal and civil federal statutes and U.S. Constitution. Thereafter, California prevented or influenced state courts from complying with the express provisions of the statutes, U.S. Supreme Court precedents and U.S. Constitution as explained below.

Many legal commentators and state justices commented that the "supreme court apparently agreed with opinion because a petition for review was denied." [Appendix pp. 1-2] Thus, this court's review is important. Once California's violations of federal laws are *tacitly approved* by denying a petition for certiorari, other 49

state bars also have the equal right to violate the federal laws within their boundaries under the Equal Protection Clause. Then, "Principles of federalism, as well as the Supremacy Clause" will collapse. [*Felder v. Casey*, 487 US 131, 134, 108 S.Ct. at 2314 (1988)]

STATEMENT OF JURISDICTION

This court has both federal question and appellate jurisdiction after the California Supreme Court denied Petition to review on 3/3/04. [Appendix C][1/]

STATEMENT OF FACTS

1. Petitioner had complained California's non-compliance with the laws. During the deposition, California admitted that California was familiar with the law [Appendix p. 3:21-25] but had not obeyed the State Bar Act. [Appendix pp. 4:25-5:6]

2. Petitioner complained of California's illegal conducts to the committee only. However, California's accommodation department joined and conspired with the California's committee to injure Petitioner against 18 U.S.C. §241. California testified that California had not received Petitioner's accommodation requests [Appendix pp. 6:10-15, 7:8-11] and could not provide the same accommodation that had been provided to a hand-injured disabled Petitioner.

3. However, California's own Bates stamp numbers showed that California had received Petitioner's accommodation requests [Appendix pp. 8-10] at least three times but simply ignored them.

4. Without the same accommodations provided before, a disabled Petitioner cannot re-take the bar examination. Therefore, the conspiracy between the accommodation department and the committee violated Title II of Americans with Disabilities Act

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[1/] According to the guide, Appendix A Decision of State Court of Appeal; Appendix B Decision of State Trial Court; Appendix C Decision of State Supreme Court Denying Review

("ADA"), federal Civil Rights Act [42 U.S.C. §§1981-1983, 1985,1986] and equal right to take the examination under the Equal Protection Clause.

5. After a civil suit had been filed against California, Petitioner confronted California's continuous harassment and abuses of the discovery process that will be shown later.

6. The evidences, in the appendix, show California and state courts have past, present and future conflicts of interest that prevent state courts from protecting federal or constitutional rights against California. [Appendix p. 167]

STATEMENT OF THE CASE

Petitioner sued California for (1) violation of the State Bar Acts, (2) Fraud, (3) Negligent Misrepresentation, (4) Negligence, (5) Injunction, (6) Violation of Public Policy under the due process and equal protection clauses of Amendments V and XIV. [Appellant's Appendix ("AA")[2/] p. 2] During the discovery process, (7) violation of Title II of ADA and (8) Civil Right Act violations were found and added to the first amended complaint. [AA pp. 1274-1276]

Superior court granted California's motion for summary judgment based on California Tort Claims Act although this case is exempt from the filing procedures because of the Supremacy Clause (Art. VI, cl. 2) and the Federal Civil Rights Act issues. [Appendix B]

Court of Appeal opinion affirmed the lower court judgment by simply ignoring U.S. Supreme Court adverse precedent cited in Petitioner's briefs. [Appendix A]

California Supreme Court denied petition for review.

[2/] Original Appellant's Appendixes locate at the state court.

SUMMARY OF ARGUMENT

California's conducts were against the federal criminal statute. California prevented state judges from performing the judicial duties as explained below. The grounds of Principles of federalism will be destroyed when other 49 states equally violate the federal laws under the Equal Protection Clause. Therefore, state court decisions should be reversed.

STANDARD OF REVIEW

I. LEGAL STANDARDS APPLICABLE TO DETERMINE WHO HAS TO ABIDE BY THE FEDERAL LAWS

Under U.S. Const. Amendment V and XIV, the laws are equally applicable to normal citizens and powerful officials. When the government expects its citizens to abide by the federal laws, no less is expected from powerful state officials.

Under the Supremacy clause, state Tort Claims filing requirements cannot defeat a claim arising under federal law. [*Felder v. Casey*, 487 US 131, 134, 108 S.Ct. 2302, 2304-2305 (1988)] Furthermore, it is not permitted to invoke state Tort Claims Act to protect California's crimes against 18 U.S.C. §241.

II. STANDARD OF REVIEW FOR REGULATORY TAKING IN VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

When California Supreme court denied Petitioner's Petition, the court of appeal opinion becomes decisional law because justices commented that California "supreme court apparently agreed with opinion because a petition for review was denied." [*Estate of Wathen* (1997) 56 CA4th 48, 53, 64 CR2d 805, 808, fn.5; See Appendix p. 2] Petitioner must comply with the law.

When this decisional law takes away a citizen's property against the express contents of statutes to regulate the suits against California's federal crimes, it is a regulatory taking. The standard

of review is whether it "substantially advance" a legitimate state interest. [*Chevron USA, Inc v. Cayetano*, 224 F.3d 1030, 1033 (9th Cir. 2000), *cert. denied*, 532 U.S. 942 (2001)] Thus, it is an unconstitutional regulatory taking, where this law simply forces citizens to close their eyes whenever they see California's federal law violations.

ARGUMENT

When California admitted its violations of both criminal and civil federal statute, the review of this court is important. Many legal commentators and state justices commented that "supreme court apparently agreed with opinion because a petition for review was denied." [Appendix pp. 1-2] The review of this court is more important when the state court opinion is against the express provisions of U.S. Supreme precedents, U.S. Constitution and statutes. Therefore, *tacit approval* of this court may allow all 50 state bar officials to stomp the federal laws within their boundaries under the Equal Protection clause.

I. CAN ANY POWERFUL STATE OFFICIALS HAVE THE RIGHT TO TROMP OR STOMP THE EXPRESS PROVISIONS OF CRIMINAL AND CIVIL FEDERAL STATUTES, U.S. SUPREME COURT PRECEDENTS OR U.S. CONSTITUTION WITHIN ITS BOUNDARIES WHEN THE SUPREMACY CLAUSE STATES OTHERWISE?

A. State Law Cannot Stomp Federal Law

Claims filing requirements of state law cannot defeat a claim arising under federal law. [The Supremacy Clause and *Felder v. Casey*, 487 US 131, 134, 108 S.Ct. 2302, 2304-2305 (1988)]

Petitioner cited U.S. Supreme Court precedent with two adverse California Supreme Court precedents in his briefs. [Appendix p. 137] However, all of them were ignored in the opinion because none of them were discussed. [But the opinion correctly acknowledges "In plaintiff's opposition to the motion he argued that "Legislative intent shows that Defendants' illegal and

fraudulent acts should not be protected with Tort Claim Acts. (Legislative intent in Gov. Code §818.2)"-Appendix p. iii] U.S. Supreme Court precedent is not a worthless decision that is ignored or stomped by lower court.

Therefore, state court's summary judgment ruling based on state Tort Claims law is stomping federal laws and the Supremacy Clause when there is California's federal crime.

B. Whether Petitioner Has a Right To File The First Amended Complaint When California's Federal Crime and Civil Rights Act Violations Have Been Found During The Discovery Process

> 42 U.S.C. §1985, Note 51 states "Inadequacies in drafting civil rights complaint . . . were not type of defects in pleading that could have been cured by . . . amended complaint. *Hoai v. Vo*, C.A.D.C. 1991, 935 F.2d 308, 290 U.S.App.D.C. 142, rehearing denied, certiorari denied 112 S.Ct. 1578, 503 U.S. 967, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 504 U.S. 936, 118 L.Ed.2d 602
>
> [P]ro se litigants not to be denied opportunity to state a civil rights claim because of technicalities and that litigation should be decided on merits where possible. *Kauffman v. Moss*, C.A.3 (Pa.) 1970, 420 F.2d 1270, certiorari denied 91 S.Ct. 93, 400 U.S. 846, 27 L.Ed.2d 84

Therefore, Petitioner has a right to file the first amendment complaint when California's federal crime and Civil Rights Act violations have been found after the filing of the original complaint.

C. Is Petitioner's Nonmonetary Relief Moot?

The case is moot when determination of the legal issues in the suit is no longer necessary. [*DeFunis v. Odegaard*, 416 U.S. 312 (1974)]

However, there are several exceptions. First, an issue will not be treated as moot if it is "capable of repetition, yet evading review." [*Southern Pacific Terminal Co. v. ICC*, 219 U.S. 496 (1911)] Second, if Defendant "voluntarily ceases" the conduct about which Plaintiff is complaining, this will normally not be enough to make the case moot.

First, California admitted parts of evidences were "voluntarily" destroyed during the inspection period. [Appendix pp. 176-179] California admitted parts of evidences are currently kept by the affiliated organization, National Conference of Bar Examiners. [Appendix p. 64] Thus, California's admission is contrary to the opinion because destroying the evidences during the inspection period is not State Bar Policy. (i.e., The opinion incorrectly states "[T]he answer booklets . . . have been destroyed according to State Bar Policy. – Appendix A, p. ii)

Second, California's federal crime against 18 U.S.C. §241 is capable of repetition and is *currently* going on. After Petitioner had complained California's violations of laws, the accommodation department joined and conspired with the committee and refused to provided the accommodation at least three times against Title II of ADA and Civil Rights Act. (supra)

Therefore, state court decisions are contrary to U.S. Supreme Court precedents and mootness does not exist as the opinion states.

D. Can California Prevent or Influence State Court from Performing Duties?

According to Federal statute 42 U.S.C. §1985 (1), California cannot prevent or influence states courts from performing judicial duties. Recently, Californian jury also determined that influencing

the court is a felony under "conspiracy to pervert and obstruct justice." [Appendix p. 180]

California has the power to influence the state courts as explained in Reply to Answer to Petition to California Supreme Court. [Appendix p. 167]

Furthermore, California presented three issues in Answer to Petition to California Supreme Court. Evidences prove that *all* three issues are false. [Appendix pp. 147, 162] The opinion incorrectly states "He argues that his delay in seeking leave to amend is not, in and of itself, grounds for denial of his request for leave to amend." [Appendix A, p. vi] Petitioner said, "Delay, which was caused by [California], alone is not grounds for denial." [Appendix p. 45] These evidences show California has prevented or influence state court from performing duties.

E. Imperative Public Concerns

There are many imperative public concerns where California is violating the laws for the following reasons.

First, Petitioner was diligently looking for a lawyer through www.lawyers.com. However, all lawyers did not want to fight against California because it is a disciplining organization. Furthermore, once the discipline process starts, "Petitioning attorneys must serve three copies of the petition and other pleadings on General Counsel of the state bar at the state bar's San Francisco office." (Eisenberg, Horvitz and Wiener, *Cal Practice Guide: Civil Appeals and Writs* (2002) ¶13:237) Currently, General Counsels are representing California. Thus, few lawyers want to fight against California. Consequently, only Pro Se Plaintiff can disclose California's federal law violations.

Second, all state bars have the equal rights under the due process and equal protection clause. When California has the right to tromp the express provision of federal criminal or civil statutes, all other 49 state bars also have the equal rights to stomp the federal statute

within their boundaries. Therefore, imperative public concerns arise as federalism falls.

II. CAN CALIFORNIA REQUEST STATE COURT TO REGULATORILY TAKE CITIZENS' PROPERTY TO PREVENT CITIZENS FROM DISCLOSING CALIFORNIA'S VIOLATIONS OF FEDERAL LAWS?

Government has the right to take private property for public use, provided that "just compensation" is paid. (Takings Clause of the Fifth Amendment) The standard of review for regulatory taking is whether it "substantially advances" a legitimate state interest. [*Chevron USA, Inc v. Cayetano*, 224 F.3d 1030, 1033 (9th Cir. 2000), *cert. denied*, 532 U.S. 942 (2001)]

Thus, state law cannot take citizens' property away against the express provisions of the statute unless it substantially advances a legitimate interest. [Opinion in Yee v. City of Escondido, 503 U.S. 519 (1992)]

A. California Admitted Its Violation of Laws

First, California has testified that California had not received Petitioner's requests for the accommodation [Appendix pp. 6:10-15, 7:8-11] and thus could not provide the accommodation. However, California's own Bates stamp numbers showed that California had received Petitioner's accommodation requests [Appendix pp. 8-10], at least three times, but did not comply with Title II of ADA [also state Civil Rights Act violation under California Civil Code §51(f)] and thus violated federal Civil Rights Act. [42 U.S.C. §1983] The conspiracy exists. (supra)

Second, California admitted that California was familiar with the law [Appendix p. 3] but had not obeyed the State Bar Act. [Appendix pp. 4-5]

Third, California admitted it had destroyed the disputed examination papers during the inspection period against rule. [Appendix p.176-179]

B. Statute Expressly Prohibits The Recovery of Defense Costs

After the summary judgment ruling was affirmed based on California Tort Claims Act, the opinion states "defendants are entitled to recover costs. (Code Civ. Proc., [CCP] §1032)" [Appendix A, p. ix]

However, CCP §1032 (b) states, "[E]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs" CCP §1032 (Note 1) also states "The prevailing party is entitled to all of his costs unless another statute provide otherwise". Therefore, state court lacks statutory or inherent authority to require Petitioner to pay defense costs when another statute provides otherwise [CCP §1032(Note 1.3-Authority of court)] because state court also has an obligation to comply with statutes. Here, another statute provide otherwise.

California Civil Procedure §1038 handles any civil proceeding under the California Tort Claims Act. ("Any" means "every" according to Webster's New World dictionary.) Furthermore, moving California "must negate either good faith or reasonable cause" in order to recover defense costs. California admitted its violation of laws. Therefore, state court lacks statutory or inherent authority to require Petitioner to pay defense costs when another statute prohibits California to recover costs.

Therefore, the decisional law, contrary to the express provision of statutes, is an unconstitutional regulatory taking because its purpose is to regulate citizens not to disclose California's federal law violations.

C. Standard of Review under Due Process Clause

Due Process Clause claim under the due process "reasonableness" test is also applicable in this case.

California's accommodation joined and conspired with the commission and refused to provide the legal accommodation

against Title II of ADA and Civil Rights Act. California admitted its violations of laws.

Therefore, awarding the defense costs against the express provisions of statute is unreasonable against Due Process Clause and state officials could not ignore or stomp U.S. Supreme Court precedents and federal statutes.

CONCLUSION

Courage is one human character that is difficult to find from officials. [Benjamin Disraeli-British statesman; prime minister (1868; 1874-80)]

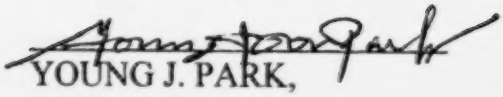
California tested state officials' courage by writing all three false issues in its Answer with a strong word like "never". [Appendix pp. 147, 162] California also tested state official's courage by asking a blank check twice against the express provisions of the statute. [Appendix pp. 29, 31] California could tromp or stomp the express provisions of criminal and civil federal statutes, U.S. Supreme Court precedents or U.S. Constitution within its boundaries. California could even admit its violations of laws because no courageous officials are in front of California.

Lopez case and this case show state officials' tendency to stomp the federal laws unless the courageous federal justices step in and protect them.

Therefore, the petition for a writ of certiorari should be granted and the protection of federal law by this Court is necessary as the *Lopez* court did. Unless, legal commentators and state justices could comment that [U.S.] "supreme court apparently agreed with opinion." [Appendix pp. 1-2] Then, other 49 state bars could violate the federal laws; admit the violations; still win the cases; recover the defense costs against the express provisions of the statute; prevent citizens from asserting their federal rights within their boundaries.

DATED: May 26, 2004

Respectfully Submitted,

BY: 
YOUNG J. PARK,
Pro Se Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32 and U.S. Supreme Court rule, the attached brief is 12 page, has a Times New Roman 12-point type is used for the body of the petition and 10-point type is used for footnotes.

DATED this 26th day of May, 2004

BY:
YOUNG J. PARK,
Pro Se Petitioner

STATEMENT OF RELATED CASES

Petitioner is aware of no related case pending before the court.

(2)
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And DOES 1-20, inclusive,
Respondents

On Petition For Writ Of Certiorari
To The California Supreme Court

Appendix for Petition for Writ of Certiorari
(Vol. 1 of 1)

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* Not to modify the original documents, the followings are done.

1. Only cited pages are reformatted to fit on paper that measures 6 1/8 by 9 1/4 inches.

Example:
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2. Un-cited pages from the public documents are omitted.

* Omitted pages: (from the Appendix filed on 6/2/2004)

Pages 11-28, 30, 32-44, 46-63, 65-136, 138-146, 148-161, 163-166, 168-175

3. The same page numbers are used to help the Justices when they compare the reformatted pages with the original pages.

4. In the original Appendix, this court has six complete previous briefs, to the state courts.

5. This reformatted appendix has been checked for any mistakes. However, if there are any human or mechanical typos, the original appendix, filed on 6/2/2004, controls.

6. A Times New Roman 12-point type is used for the body and 10-point type is used for footnotes.

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

FILED
DEC 19 2003
COURT OF APPEAL-SIXTH APP. DIST.
MICHAEL J. YERLY, CLERK
BY _____
DEPUTY

YOUNG J. PARK, Plaintiff and Appellant, v. STATE BAR OF CALIFORNIA, et al., Defendants and Respondents.	H025932 (Santa Clara County Super. Ct. No. CV804537)

Plaintiff Young J. Park appeals after the trial court granted summary judgment in favor of defendants State Bar of California (State Bar) and one of its employees, Jerome Braun, on the ground that Park failed to comply with the claim filing requirements of the Government Tort Claims Act (the Act). (Gov. Code, § 800 et seq.) Plaintiff challenges the trial court's summary judgment ruling as well as the denial of his motion for leave to file a first amended complaint. We conclude for the reasons stated below that the trial court's summary judgment ruling was correct and that it properly

denied plaintiff's motion for leave to file an amended complaint. Accordingly, we affirm the judgment.

Plaintiff's complaint, filed January 15, 2002, alleged plaintiff took and failed the February 2000 bar examination, but defendants refused to disclose the grading of his examination papers. The complaint included causes of action for violation of Business and Professions Code sections 6065 and 6045[1], fraud, negligent misrepresentation, negligence, injunction, and violation of public policy. Plaintiff requested damages for general pain and suffering; general, specific and compensatory damages; consequential damages; punitive damages; prejudgment and postjudgment interest; a prohibitory injunction against further destruction of existing and future hand-written papers; a mandatory injunction to disclose any undestroyed grades of papers; and any other relief that the court may deem proper. Defendants' answer, filed on or about April 26, 2002, raised an affirmative defense that plaintiff was seeking tort damages from defendants, but failed to present a timely filed claim for damages against defendants as required by the Act.

Defendants moved for summary judgment or in the alternative summary adjudication of issues based in part on its claim that the Act requires that plaintiff submit a claim for money damages against public entities such as defendant State Bar prior to filing suit. In the motion defendants stated that the answer booklets for the February 2000 bar examination have been destroyed according to State Bar policy, making plaintiff's request for a prohibitory

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[1] "(a)(1) Any unsuccessful applicant for admission to practice, after he has taken any examination and within four months after the results thereof have been declared, has the right to inspect his examination papers at the office of the examining committee located nearest to the place at which the applicant took the examination. [¶] (2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise." (Former Bus. & Prof. Code, § 6065; Stats. 1974, ch. 38, § 1, p. 51.) "The local administrative committee shall perform such other duties in furtherance of the execution of the provisions of this chapter as the board may direct." (Bus. & Prof. Code, § 6045.)

injunction moot. Plaintiff was given copies of the grading tabs removed from the covers of his written examination answers, and the bar examination grader sheets showing plaintiff's essay examination scores, so plaintiff's request for a mandatory injunction was moot. Defendants further argued that although nonpecuniary actions, such as those seeking injunctive relief, are not subject to the claims-presentation requirements of the Act, when the primary purpose of such an action is pecuniary in nature the action has been held subject to the claims-presentation requirements. Accompanying defendants' motion was a copy of plaintiff's deposition, wherein he admitted that he did not file a claim of damages with defendant State Bar pursuant to the Act. In the same deposition, plaintiff stated that he was seeking damages as well as an injunction requiring the State Bar to keep and disclose existing graded examinations.[2]

In plaintiff's opposition to the motion he argued that "Legislative intent shows that Defendants' illegal and fraudulent acts should not be protected with Tort Claims Acts. (Legislative intent in Gov. Code § 818.2)"

The trial court took the matter under submission after a hearing on February 27, 2003. The same day, the court filed its order granting the motion for summary judgment. The court found that plaintiff's failure to comply with the claim requirement barred his claim for money damages, and that, as a whole, plaintiff was seeking money damages.

On March 14, 2003, plaintiff moved for leave to file an amended complaint that would add a defendant and new causes of action. Defendants opposed the motion, arguing that allowing amendment of the complaint after the motion for summary judgment was granted would not be in furtherance of justice. The trial court took

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[2] Although plaintiff also stated that he was requesting an injunction that would require the State Bar to reevaluate his examination to see whether he should have passed the February 2000 bar examination, plaintiff's complaint does not request such relief.

the matter under submission after a hearing on April 29, 2003. Judgment was filed in favor of defendants on May 7, 2003.

DISCUSSION

On appeal from a summary judgment, we conduct an independent review, applying the same three-step process as the trial court. (*Burroughs v. Precision Airmotive Corp.* (2000) 78 Cal.App.4th 681, 688.) We first look to the plaintiff's complaint in order to identify the causes of action for which relief is sought. We then examine the defendants' motion to determine whether it shows that "one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendants meet this burden, "the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff . . . may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (*Ibid.*) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aquilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

Here defendants established a complete defense because "no suit for money or damages may be brought against a public entity on cause of action for which a claim is required to be presented . . . until a written claim therefore has been presented to the public entity and has been" rejected in whole or in part. (Gov. Code, § 945.4) "Public entity' includes . . . any . . . public corporation in the State." (Gov. Code, § 811.2.) "The State Bar of California is a public corporation." (Cal. Const., art. VI, § 9; Bus. & Prof. Code, § 6001.) Thus, no suit for money or damages may be brought against defendant State Bar unless a written claim was presented to it and was rejected in whole or in part.

'[A] cause of action against a public employee . . . for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred . . ." (Gov. Code, § 950.2.) The timely submission of a claim to a public entity is a condition precedent to a tort action against either the public entity or the individual public employee acting within the scope of his or her employment. (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838.) Defendant Braun is an employee of defendant State Bar, and all causes of action in plaintiff's complaint relate to Braun's actions as an employee of defendant State Bar. Therefore, plaintiff's action against defendant Braun is barred if the action against defendant State Bar is barred.

The right to obtain relief other than money or damages is not affected by the Act. (Gov. Code, § 814.) Thus the claims-filing requirements of the Act do not bar maintenance of actions for nonmonetary relief. (See *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 121.) Moreover, when money is sought incidental to nonmonetary relief such as an injunction or declaratory relief, the claim is not deemed one for money or damages and the claim provisions of the Act do not apply. (*Eureka Teacher's Assn. v. Board of Education* (1988) 202 Cal.App.3d 469, 475; Coats, et al., *Cal Government Tort Liability Practice* (Cont. Ed. Bar 4th ed. 2003) § 987, p. 508.) This exception to the claims-filing requirements of the Act does not apply when the demand for nonmonetary relief is merely incidental or ancillary to a prayer for damages. (*Hart v.County of Alameda* (1999) 76 Cal.App.4th 766, 782; *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1081.)

The request for nonmonetary relief in plaintiff's complaint was for an injunction requiring defendants to keep and disclose to plaintiff the grading of his February 2000 bar examination papers. Defendants have already disclosed to plaintiff the grading of each of his written examination answers, but they destroyed plaintiff's actual examination answers in 2000. Defendants have not had possession of materials relating to the multistate portion of the

examination since October 2000. Thus, plaintiff's request for nonmonetary relief is moot. At the time of defendants' summary judgment motion, the only viable request for relief in plaintiff's complaint was for money damages. Defendants established a complete defense to plaintiff's complaint, as plaintiff admitted that he did not file a claim for money damages with defendant State Bar prior to filing suit.

Once the complete defense was established, it became plaintiff's burden to present evidence creating a triable issue of material fact as to that defense. (Code Civ. Proc., § 437c, subd. (p)(2).) In his separate statement of undisputed facts filed in support of his opposition to defendants' motion for summary judgment, plaintiff disputes that he never submitted a claim for money damages. However, he sets forth no evidence in support of his claim. He merely argues that the Act "was not made to provide the protection to a public officer who disobeys the laws, "citing Government Code sections 818.2 and 810.[3] Plaintiff's bald assertion, which is unsupported by the statutes he cites, was a wholly inadequate rebuttal of defendants' proof that no claim for money damages had been filed. (See, Gov. Code, §§ 910, 915; cf. *Ruffino v. City of Los Angeles* (1964) 226 Cal.App.2d 67, 68-70; *Whitney's at the Beach v. Superior Court* (1970) 3 Cal.App.3d 258, 270-271.) As plaintiff failed to meet his burden to show that he made a written claim for money damages, defendants are entitled to judgment as a matter of law.

Plaintiff further argues that the trial court erred by denying his motion for leave to file an amended complaint. He states that he discovered after the complaint was filed that his answer booklets were destroyed in 2000. He states that new causes of action, specifically violations of the American with Disabilities Act and the Civil Rights Act, were also discovered during the discovery

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[3] "A public entity is not liable for an injury caused by . . . failing to enforce any law." (Gov. Code, § 818.2.) "Unless the provision or context otherwise requires, the definitions contained in this part govern the construction of this division." (Gov. Code, § 810.)

process.[4] He argues that his delay in seeking leave to amend is not, in and of itself, grounds for denial of his request for leave to amend.

The trial court may, within its discretion, permit amendments "in furtherance of justice." (Code Civ. Proc., § 437.) In general, there is a policy of great liberality in permitting amendments at any stage in the proceedings. (*Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 19; *Greenberg v. Equitable Life Assur. Society* (1973) 34 Cal.App.3d 994, 998.) The trial court has wide discretion in allowing the amendment of any pleading and, as a matter of policy, the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.)

Unwarranted delay in presenting a proposed amended complaint may be a reason for denial of leave to amend. (See *California Concrete Co. v. Beverly Hills Savings & Loan Assn.* (1989) 215 Cal.App.3d 260, 272.) The trial court may consider the lack of diligence in offering the amendment after knowledge of the relevant facts and the effect the delay may have on the defendant. (See *Davies v. Symmes* (1942) 49 Cal.App.2d 433, 444; *Huber, Hunt & Nichols v. Moore, Inc.* (1977) 67 Cal.App.3d 278, 292.)

In this case, no manifest abuse of discretion has been shown. Plaintiff unreasonably delayed in submitting the request to amend. The motion was filed 14 months after the complaint was filed, almost 11 months after defendants' answer was filed, over three months after defendants' motion for summary judgment was filed, and over one month after the court had granted that motion. The proposed new defendant was also an employee of defendant State Bar, so any action against her would also be barred by plaintiff's failure to comply with the claims-filing requirement of the Act. The proposed new causes of action were based on acts discovered almost one year prior to the request for leave to amend was filed,

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[4] Plaintiff had "discovered" the violations in May 2002.

and would have materially changed the lawsuit after defendants had concluded discovery and been told by the court that they were entitled to judgment on the complaint as a matter of law. The trial court did not abuse its discretion in denying plaintiff leave to amend.

Plaintiff's other arguments are also without merit. He argues that the trial court treated the parties unequally during discovery, but no prejudicial abuse of the discovery process by defendants has been shown. Plaintiff argues that the trial court erred in granting defendants attorney fees as a discovery sanction under Code of Civil Procedure section 128.5[5] both because defendants' counsel is an employee of defendant State Bar (citing *Trope v. Katz* (1995) 11 Cal.4th 274 (*Trope*)), and because the trial court did not "recite in detail the conduct or circumstances justifying the order." (Code Civ. Proc., § 128.5, subd. (c).) The record does not indicate that the order granting attorney fees was entered pursuant to Code of Civil Procedure section 128.5, and *Trope* simply holds that an attorney who litigates a contract action in propria persona cannot recover attorney fees under Civil Code section 1717. We have found no authority stating that defendants cannot recover attorney fees because they are being represented by in-house counsel here. (Cf. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084 [an entity that is represented by in-house counsel may recover attorney fees under Civ. Code, § 1717].) Plaintiff argues that the trial court erred in granting defendants' improper request for "defense costs" under Code of Civil Procedure section 1038,[6] because there was no

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[5] "Every trial court may order a party . . . to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 128.5, subd. (a).)

[6] "In any civil proceeding under the California Tort Claims Act . . . the court, upon motion of the defendant . . . shall, at the time of the granting of any summary judgment, . . . determine whether or not the plaintiff . . . brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint . . . If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to

showing that plaintiff's action was not brought in good faith. The judgment filed May 7, 2003 does not mention Code of Civil Procedure section 1038; it simply states that defendants shall recover their costs of suit, and that they must file and serve a memorandum of costs in order to do so. As the prevailing parties, defendants are entitled to recover costs. (Code Civ. Proc., § 1032.)[7]

DISPOSITION

The judgment is affirmed.

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the defense costs reasonable and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor o that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party. An award of defense costs under this section shall not be made except on notice contained in a party's papers and an opportunity to be heard." (Code Civ. Proc., § 1038, subd. (a).)

[7] "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).)

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

WUNDERLICH,J.

MIHARA, J.

Park v. State Bar of California

H025932

MARIE M. MOFFAT, No. 62167
COLIN P. WONG, No. 130033
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(ENDORSED)
FILED
MAY 7 2003
KIRI TORRE
CHIEF EXEC OFFICER/CLERK
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY B. CHOPOFF DEPUTY

Attorneys for Defendant
The State Bar of California
And Jerome Braun

SUPERIOR COURT OF THE STATE BAR OF CALIFONIA
COUNTY OF SNATA CLARA

YOUNG J. PARK, an individual, Plaintiff, v. THE STATE BAR OF CALIFORNIA, JEROME BRAUN, et al., Defendants.	Case No.: CV804537 JUDGMENT BY COURT UNDER CODE OF CIVIL PROCEDURE SECTION 437c

This court, having on February 27, 2003 granted the motion for summary judgment by defendants the State Bar of California and Jerome Braun ("State Bar defendants") and having ordered entry of judgment as requested in said motion.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Young J. Park shall take nothing, and that State Bar defendants shall recover from Plaintiff costs of suit. Defendants shall file and serve a Memorandum of Costs.

Dated: 5-5, 2003

WILLIAM J. ELFVING
William J. Elfving
Judge of the Superior Court

Court of Appeal, Sixth Appellate District- No. H025932
S121983

IN THE SUPREME COURT OF CALIFORNIA

En Banc

YOUNG J. PARK, Plaintiff and Appellant,

v.

STATE BAR OF CALIFORNIA et al., Defendants and Respondents.

Petition for review DENIED.

SUPREME COURT
FILED
MAR – 3 2004
Frederick K. Ohirich Clerk
DEPUTY

GEORGE
Chief Justice

ested Entities or Persons." The Certification must list persons, firms and other entities known by the party to have either (i) a financial interest in a party or the subject of the litigation, or (ii) "any other kind of interest that could be substantially affected by the outcome of the proceeding." [Sup.Ct. Int.Op.Prac. & Pro. §IV(L)]

The clerk's office will give written notice of this requirement to all parties when it notifies them that review has been granted. [Sup.Ct. Int.Op.Prac. & Pro. §IV(L)]

d. [13:126] **Denial of review**: Review may be denied by either:

- Express order signed by the Chief Justice (CRC 28.2(b)(2));or

- *Operation of law*, if no order is rendered within the jurisdictional period for ruling on the petition (CRC 28.2(b)(3); see ¶13:111). (Denial by operation of law is rare; and the court has occasionally issued a denial order even after the jurisdictional deadline.)

Denial of review may be accompanied my *depublication* of the court of appeal's opinion-either on the supreme court's own motion or after it has acted on a proper request for depublication (see ¶11:180 ff.).

(1) [13:127] **Record of dissenters**: Any justices who disagreed with the majority vote to deny review may request recordation in the court minutes of their vote to grant review. [Sup.Ct. Int.Op.Prac. & Pro. §IV(I)]

(2) [13:128] **Not an expression on merits**: A denial of review is not afforded any formal legal significance. Indeed, supreme court policy is that a denial should not be construed as an expression of opinion by the court on the

correctness of the court of appeal's opinion. [See *Trope v. Katz* (1995) 11 C4th 274, 287, 45 CR2d 241, 250, fn, 1].

The same holds true for a supreme court order directing *depublication* of an opinion: That action "shall not be deemed" an expression of the court's opinion of the correctness of the result reached by the court of appeal or of any law set forth in the opinion. [See CRC 979(d) ¶11:180.10]

- [13:128.1] **Comment**: Even so, as a practical matter, many legal commentators (and, indeed, some court of appeal justices) are inclined to interpret a denial of review accompanied by the court's depublication order as suggesting the supreme court's tacit disapproval of some aspect of the court

of appeal opinion. [See *People v. Dee* (1990) 222 CA3d 760, 763-765, 272 CR 208, 209-211; and ¶11:180.11]

Likewise, the denial of review of a published case contemporaneous with supreme court dismissal of review of pending cases raising the same point has been constructed as a tacit approval of the published case. [See *In re Eli F.* (1989) 212 CA3d 228, 234-235, 260 CR 453, 455]

Occasionally, the courts of appeal have even perceived meaning (tacit supreme court approval of a particular point) in a simple denial of review. [See *Estate of Wathen* (1997) 56 CA4th 48, 53, 64 CR2d 805, 808 fn. 5-commenting that supreme court "apparently" agreed with opinion because "a petition for review was denied"; *Macedo v. Bosio Revocable Trust* (2001) 86 CA4th 1044, 1051, 104 CR2d 1, 6, fn.6-in aligning with prior Calif. appellate decision on statute of limitations issue, court observed that an Illinois appellate case had recently rejected that position but commented, "We will not except to note that…our Supreme court unanimously denied review in (the Calif. case)" (parentheses added)]

(1) [13:128.2] **Immediate finality**: The supreme court's order denying review becomes final *when it is filed.* [CRC 29.4(b)(2)(A)]

(2) [13:129] *Issuance of remittitur*: Upon a denial of review, the supreme court clerk returns the record to the court of appeal (CRC 28.2(a)), and the appellate court clerk issues a remittitur to the trial court immediately after the supreme court denies review (or the period for granting review expires). [CRC 26(b)(1)(A)]

Cross-refer: For a complete discussion of remittitur, see ¶14:1 ff.

[13:129.1-129.4] *Reserved.*

(5) [13:129.5] **Extension of time for responsive pleading under CCP §418.10(C)**: If the supreme court denies a petition for review after the court of appeal denied a writ of mandate challenging denial of a motion to quash service of summons or to stay or dismiss the action on the ground of inconvenient forum, the time for filing a responsive pleading in the trial court under CCP §418.10(c) is extended until 10 *days* after filing of the order denying petition. [CRC 56(j)]

Q. You don't think so. Okay. You said that you have only one other name you used in the past besides your current name; correct?
A. Yes. My birth name was Sidney Jerome Braun and I haven't used that since I was in high school.
Q. Okay. What high school did u graduate?
A. Hanford High School
Q. Okay. Where is it? I mean, your high school?
A. Hanford, California.
Q. Okay. Let's go back to our communication between you and me. That is communication between you and me. I'm specifically interested in my letter dated September 9, 2000. Okay. I said: "Please do not destroy the handwritten scores for possible discovery process." You said, September 18, 2000, "... nor will destroyed." What do you mean, I mean the "... nor will they be destroyed"?
A. You have got them.
Q. I understand
A. They haven't been destroyed. That's what I mean.
Q. You said you know State Bar Act 6065; right?
A. I'm familiar with it.
Q. You say this one said, "Inspection of Papers and Grading"; right?
A. I'm familiar with what the statute says, yes.

Do you want you to look at those?
A. Yes, I want to look at those. I mean if everything is fair, then I assume you guys are fair. But my question is defendant lied to the court. Defendant refused my legal right to inspect the papers. My question is why this kind of thing happened, if you guys the officer of the court. This kind of thing should not happen in the future. That is why I requested jury trial and I requested punitive damages because this kind of thing should not happen again.
Q. I am trying to find out now what you want us to do.
If you look at the exam papers and they're all fine, is that the end of this or what do you want after that?
I mean if you look at exam and they are all right, you can feel we are all fair. If you look at the scantron sheets and you look at the answers, what I want to know is that the end or what do you want; what are you asking for; what do you want the court to award you?
A. I will give the answer to that question after I have deposed defendant. Because at this moment, I didn't collect enough evidence whether defendant hundred percent defrauded me or not. But one thing I

know is defendant did not obey the law. Defendant did not obey the State Bar Act.
Q. I understand that. But what do you want to happen because of that?
A. No. That's the fact.
Q. Okay.
A. My question is - - actually this is my statement. After I depose defendant, after I depose defendant, I will get the - - I will collect more evidence. After that, I will answer ~~to~~ you because at this moment - -
Q. Okay. Then - - so as you sit today, you don't know what you want?
A. Actually, I need more evidence and I didn't say that I don't know what I want. I know what I want.
Q. What do you want? I can ask that question. In the complaint you are suing, so u want damages or you want something. I get to know what you want. How are we going to able to even settle this case if we don't know what you want?
A. Right now have severe motion sickness. I don't want to continue at this point.
MR. WONG: For the record, we are going to stop the deposition. This deposition is not concluded based on deponent's not feeling well. It will be

cannot take February 2002 examination because at that time my hand was shaking and the doctor said my nervous system will become worse, not become better. So I asked to please reschedule the same accommodation to July 2002 examination.

Q. (By Mr. Park) Did you see this kind of thing?

Mr. WONG: Let me just object. The letter speaks for itself. The comments before is plaintiff's own testimony. The letter says what it says.

Q. (By Mr. Park) Okay. So you didn't receive this one?

A. No.

(Whereupon, Plaintiff's Exhibit 3 was marked for identification.)

(Whereupon, Plaintiff's Exhibit 4 was marked for identification.)

Q. (By Mr. Park) Then there will be another one that is dated around December 12, 2001. This one also is addressed to the Testing Accommodation Department, and I think you are the section chief in Testing Accommodation Department; am I right?

A. Correct

Okay. So did you receive that one?

A. I don't recall.

You don't recall this one? Okay. Then I sent

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Young J. Park
1035 Aster Ave., # 1227
Sunnyvale, CA 94086
January 5, 2002
Phone: 408-327-4584

The Committee of Bar Examiners of
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: 566597758

Testing Accommodation dept: (or Ms Debbie Barrientos)

I cannot take February 2002 examination.

1. Please reschedule the same accommodations to July 2002 examination. I enclose the copy of approval for 2/2002 accommodations. (Exhibit A)

2. Please also send me the short application for July 2002 examination.

Thank you.

Sincerely yours,
s/youngjoonpark

Young J. Park
1035 Aster Ave., # 1227
Sunnyvale, CA 94086
December 12, 2001
Phone: 408-327-4584

The Committee of Bar Examiners of
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: 566597758
State bar letter dated 7/7/2001

Testing Accommodation dept:

As I said through 6/10/2001 letter, I could not take July 2001 exam because of my personal health reason.

I am planing to take the next exam. Since my writing right hand had been permanently damaged by the accident, please send me the testing accommodations information as you did before.

If the testing accommodation cannot be arranged on time, I may take July 2002 exam.

Please also change my mailing address. The new address is 1035 Aster Ave., #1227, Sunnyvale, CA 94086.

Thank you.

Sincerely yours,
s/youngjoonpark

Young J. Park
1035 Aster Ave., # 1227
Sunnyvale, CA 94086
December 1, 2001
Phone: 408-327-4584

The Committee of Bar Examiners of
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: 566597758

Dear Ms. Debbie Barrientos (or Testing Accommodation dept.)

As I said through 6/10/2001 letter, I could not take July 2001 exam because of my personal health reason.

I am planing to take the next exam. Since my writing right hand had been permanently damaged by the accident, please send me the testing accommodations information as you did before.

If the testing accommodation cannot be arranged on time, I may take July 2002 exam.

Please also change my mailing address. The new address is 1035 Aster Ave., #1227, Sunnyvale, CA 94086.

Thank you.

Sincerely yours,
s/youngjoonpark

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pp. 680-682] However, a pastor wrote the letter to Jerome's supervisors and politely asked the due process under the Constitutions. A pastor also showed SB's perjuries and the violations of the laws to SB's top people for the public interest [AP p. 661] because all SB's employees had made perjuries. (AP pp. 998:24-1000:13)

27. SB responded [AP p. 683] and a pastor replied again by mentioning the due process and equal protection for the public interest. [AP p. 1094] However, SB refused to comply with the procedural due process.

28. The honorable granted SB's motion for the summary judgment based on Tort Claims Act. [AP p. 1192]

29. SB wrote a letter to hide its perjuries and the violations of the laws from the public. [AP p. 1197] Young responded by saying "perjury (or violation of laws) by the public entities is against the *public interest*." [AP p. 1210]

30. After SB's motion for the summary judgment was granted, SB requested the blank check [AP p. 1209] to the honorable.

31. Young responded to SB's request of the blank check [AP p. 1310] because CCP §1038 mentions "*any civil proceeding* under the California Tort Claims Act". [AP p. 1312] Young informed the decision of the court of appeal,

36. SB requested the blank check again [AP pp. 1365, 1372-1377] as its harassment in bad faith although Young had provided the higher court decisions and requested the explanations of costs as a professional courtesy. [AP p. 1310]

37. Young filed the notice of appeal. [AP pp. 1369-1370]

38. During the appeal process, Young has found the conflict of interest between SB and the judges. SB has judicial performance evaluation and investigation powers over the judges. [AP pp. 1382-1386, 1391, 1431] In a real world, a person is evaluated and admonished by his or her supervisor. Then, SB is a "practical" boss of all judges because the commission reports to the president of SB. [AP p. 1382]

39. Furthermore, SB can review the judge's conduct [AP 1391, Rule 112]. SB can also make all determinations of removal, censure and admonishment over the judges. [AP p. 1387] Then, individual honorable need the higher courts' supports to fight for the justice, *whenever SB violates the laws*, because SB monitors the individual judge with SB's assigned power from the Supreme Court and Legislature. [AP p. 1391]

40. Therefore, higher Courts of California and U.S. Supreme court should determine SB's federal and state law violations, frauds and others under these extraordinary circumstances.

accommodation. SB's Bates stamp numbers showed that SB had received the written requests at least three times [AP pp. 1354-1356] Thus, SB prevented Young from taking the bar examination further.

The new causes of action, the violations of Title II of ADA and Civil Right Act (i.e., retaliation) were happened subsequently in the "chain of causation" (*Olson v. Volkswagen of America* (1988) 201 CA3d at 1443, 247 CR at 722) of originally pleaded causes of action to support her co-worker and employer, SB, illegally.

Therefore, Young's motion for leave to file the first amended complaint should be granted and all causes of action should be litigated in the same lawsuit.

B. Delay, Which Was Caused by SB, Alone Is Not Grounds for Denial.

SB caused the delay by refusing to provide the Scantron sheets. Then, SB's delay cannot be the grounds for denial against Young. SB's last refusal, against the law and order, to provide the Scantron sheets happened in January 2003. [AP p. 651]

Assuming Young caused the delay. Still delay alone is not the grounds for denial. "If the delay seeking the amendment has not misled or prejudiced the other side, the liberal policy allowing amendments prevails." Weil and Brown, *Cal. Practice Guide: Civil Procedures Before Trial*

Conversations between himself and State Bar counsel which were prepared without State Bar counsel's knowledge or consent. (AA, pp. 166-181.) On October 7, 2002, Park filed his opposition to the State Bar's motion. (AA, pp. 182-239.) The State Bar filed its reply to Park's opposition on or about October 18, 2002. (AA, pp. 273-276. Park thereafter filed his reply to State Bar's reply on October 23, 2002. (AA, pp. 277-299.)

At the hearing on October 25, 2002, the Honorable Thang N. Barrett granted the State Bar's motion ordering Park to produce the disputed unedited audiotape and also pay the State Bar the amount of $323.00 as sanctions. (AA, pp. 399-401.)

On October 7, 2002, Park filed an amended notice of motion compelling responses to inspection demands to be heard on November 22, 2002. Park sought to compel scantron answer sheets from the Multiple Choice section of the bar examination which is administered by the National Conference of Bar Examiners ("NCBE") in Iowa City, Iowa. (AA, pp. 213-239.) The State Bar filed its opposition to Park's motion on November 5, 2002 pointing out that it was not in possession, custody or control of the scantron answer sheets since they had already been returned to the NCBE. (AA, pp. 307-347.) Park filed his reply on November 14, 2002. (AA, pp. 348-398.)

On November 22, 2002, the Honorable Thang N. Barrett granted Park's motion ordering the State Bar to submit a response pursuant to Code of Civil

adverse higher decisions to the California Supreme Court in its opinion.

Petitioner mentioned the following Supreme Court decisions in his briefs. However, none of them were mentioned in the Court of Appeal opinion.

Those Supreme Court decisions are all adverse to the Court of Appeal Opinion:

1. *Felder v. Casey* (1988) 487 US 131, 134, 108 S.Ct.2302, 2304-2305

2. *Holt v. Kelly* (1978) 20 Cal.3d 560, 565, 20 Cal.3d 560

3. *Johnson v. State* (1968) 69 Cal.2d 782

Therefore, review is necessary to secure uniformity in case law.

D. Administration of Justice

Legislature created State Bar as the assisting corporation *to assist* the Court in matters of admission and discipline of unethical attorney. (*Emslie v. State Bar of California* (1974) 113 Cal.Rptr. 175, 520 P.2d 991, 11 C.3d 210; Cal. Const., Art. VI, §9)

Administration of justice is not possible when the judge's decisions are influenced by the assisting organization.

Furthermore, an unethical SB would monitor a state judge, if SB's illegal conducts were overlooked and not corrected. Then, who wants to be a fair judge against SB's illegal conducts when his/her interest is at risk?

which a passing score is one of the requirements for admission to practice law in the state of California.

Park's petition purports to present the following issues for review,

"1. 'Justice is blind,' that is a judge must and should be impartial, but because of conflicts of interest, can a judge become an advocate of a party before his court?

2. Does the California Supreme Court have exclusive plenary jurisdiction over matters involving the admission to the practice of law in this state?" (Petition, p. 1.)

The Sate Bar submits that the first issue Park presents for review was never raised or addressed in the courts below. Furthermore, Park's second issue is not an issue because the State Bar does not nor has it ever disputed that this Court has a jurisdiction. Finally, with respect to Park's petition, the State Bar submits that he has failed to demonstrate any error by the appellate or trial court in that the superior court correctly ruled that Park failed to comply with the Government Tort Claims Act prior to his filing his complaint for damages. Accordingly, the petition should be denied.

B. <u>Procedural History</u>

The record in this case establishes that on January 15, 2002, Park filed a complaint for damages and injunctive relief against the state bar and one of its employees. Park's complaint sought, among other things, compensatory and

their judicial proceedings, was violated. [*Ward v. Village of Monroeville* (1972) 409 US 57, 61-62, 93 S.Ct. 80, 83-84]

Petitioner presented the following issues for review:

1. "Justice is blind," that is a judge must and should be impartial, but because of conflicts of interest, can a judge become an advocate of a party before his court?

2. Does the California Supreme Court have exclusive plenary jurisdiction over matters involving the admission to the practice of law in this state?

The State Bar ("SB") of California alleged "the first issue . . . was never raised or addressed in the court below." (Answer, p.2) SB has lied to this Court because both Appellant's Opening brief ("AOB" pp. 24-25) and Appellant's Reply briefs ("ARB" p. 15) raised the conflicts of interest issue. Petitioner also asked to the court below "this case should be assigned to the proper court that is not influenced by SB's . . . powers to meet the due process and equal protection clause." (AOB pp. 35-36)

SB also alleged the "second issue is not an issue" (Answer p.2). It is also SB's lie to this Court. In fact, SB disputed this issue several times. [Appellant's Appendix ("AA") pp. 31, 416] However, Petitioner had to wait until this case

A. Judge's Past and Present Conflicts of Interest

The commission on judicial evaluation rated judicial candidates for trial and appellate judges. (Rules and Procedures of the commission on judicial nominees evaluation, Rule I, §§1-2; See also AA p.1384)

The chair of the commission or any commissioner shall report . . . to the president of SB. (Rule VI; See also AA p.1382)

"Files of the commission" are "at the offices of the SB" (Rule III) Therefore, the confidential files of the judges are currently at the offices of SB.

Furthermore, when the commission institutes the formal proceedings against a judge, "*trial counsel* shall serve as *examiner*." (Commission on Judicial Performance, Division III, 3.11 Duties of Trial Counsel)

Therefore, state judges have past and present conflicts of interest with SB.

B. Judge's Future Conflicts of Interest

"SB may institute appropriate attorney disciplinary proceedings against any judge who retires or resigns from office . . ." (Art. VI, §18(e) of Cal. Constitution) Then, state judges have future conflicts of interest with SB.

Therefore, judges' "impartiality might reasonably be questioned". (28 U.S.C. §455(a))

what, the essay answers?
A. The essay answers and the performance and the MBE answers. And what I said was if I can see the handwritten scores, on the examination papers, I thought I could compare that one against the computer scores, which I received.
Q. Okay. What I'm looking at is this last sentence, "I am only interested in the hand written scores of February bar exams."
From our - - or your past testimony, we have kind of come to an agreement that your request for handwritten scores meant examination papers - -
A. Correct
Q. - - or that was your interpretation.
A. Correct.
Q. But now this says, "I am only interested in the hand written scores. Now you're qualifying it. What I'm interested in is, if " hand written scores" means examination papers, which you've testified means everything, why are you qualifying that?
A. I'm sorry. Would you say it one more time, please?
Q. Okay. You have qualified this sentence with "I am only interested in the hand written scores of

INSPECTION OF EXAMINATION PAPERS

Unsuccessful applicants may inspect their examination papers in the Office of Admissions nearest the location at which they took the examination from June 15, 2000 through October 16, 2000 except from July 24, 2000 through July 28, 2000.

MBE: Appointments to inspect your MBE papers must be made in advance. Appointments for a period of three [3] hours, in a proctored situation (no notes permitted) will be made on a first-come, first-served basis from June 15, 2000 through October 16, 2000, excepting from July 24, 2000 through July 28, 2000. EACH APPLICANT IS LIMITED TO A SINGLE APPOINTMENT. All who may wish to inspect their MBE papers cannot be accommodated at the same time as only ten applicants may be accommodated at each office during each three-hour session. To make an appointment, call the appropriate Office of Admissions, (415)538-2303 in San Francisco and (213)765-1500 IN Los Angeles. Appointment hours are from 9:00 a.m. to noon and 1:30 to 4:30 p.m.

ESSAY AND PERFORMANCE TEST: Requests for return of your original essay answers and performance test answers will be honored from June 15, 2000 through October 16, 2000. The original answers may be picked up at the State Bar's Office of Admissions nearest the location at which you took the examination or you may request that they be sent to you by certified mail, return receipt requested. Complete the form, which is the last page of this document, and bring it with you; or have it notarized and send it with a check or $10.00, payable to the State Bar of California, to the Office of Admissions nearest the location at which you took the examination. If you intend to pick up your answers from the San Francisco office of Admissions, you must call the day before you intend to do so. Arrangements will be made so you can pick them up at the office on the intended day either between 10:00 a.m.-11:00 a.m. or 2:00 p.m. – 3:00 p.m.

You may request copies of your essay answers and performance test answers instead of originals. Complete the form which is the last page of this document. Specify "copies." Bring the form with you and a check or $40.00 or have it notarized and send it with a check for $40.00 to the Office of Admissions nearest the location at which you took the examination. Requests of this nature will require additional time to process and will be mailed to you.

FEBRUARY 2000
ESSAY AND PERFORMANCE TEST SUBJECT COVERAGE

Question Number	Subject		Tasks
1.	Community property		
2.	Remedies	PT-A	Draft legal memorandum
3.	Torts	PT-B	Draft corporate policy/
4.	Wills/Trusts		Draft persuasive letter
5.	Contracts		
6.	Criminal Law		

The above table indicates the fields of law of the main problems in each question. However, the questions often contain points in other fields, too. The questions are not labeled in the examination itself.

PERCENTILE EQUIVALENTS

An assessment of your performance relative to the performance of the other February 2000 examinees, is available by accessing the State Bar's Home Page through the internet (http://www.calbar.org) or upon request from the State Bar's Office of Admissions.

PRACTICAL TRAINING OF LAW STUDENTS – Termination of Certification
Certification under the Rules Governing the Practical Training of Law Students is terminated when an applicant is unsuccessful on or fails to take the first General Bar Examination for which he/she is eligible.

A. My department, Admissions.
Q. Your department. Okay. Is there some kind of branch in your department which destroyed that document or just a general - -
A. I assume it's the - -
MR WONG: I mean, if you know, you know. If you don't, don't assume.
THE WITNESS: I don't know for sure.
Q. (By Mr. Park) Okay. You don't know for sure. Do you know approximately when those documents were destroyed?
A. which documents?
Q. Especially answer books.
MR.WONG: We're talking about essay answer books; right?
Q. (By Mr. Park) Essay answer books.
A. Which essay answer books?
Q. Especially the February 2000 exam answer book.
A. They would have been destroyed approximately shortly before the July 2000 administration of the bar exam.
Q. Okay. The performance one, performance one, I mean, were those documents - -
A. Performance tests?
Q. Yes. - - destroyed almost at the same time?

A. Yes.
Q. Okay. How about Scantron sheets? The Scantron sheets were destroyed about the same time?
MR.WONG: MBE Scantron sheets?
Q. (By Mr. Park) Un-huh.
MBE Scantron sheets - - and they, actually, shouldn't be called Scantron. I think "Scantron" is a trade name. They're bubbly. They're designed to be read by a computer. Those answer sheets are returned to the National Conference of Bar Examiners in care of America College Testing in Iowa. I don't know what they do with them. I don't know whether they destroy them or not.
Q. You don't know. Is there any way to know whether they are destroyed or not?
MR. WONG: Do you know?
(By Mr. Park) Do you know?
A. You could ask them.
MR. WONG: I believe I have given you the address.
Q. (By Mr. Park) No, I sent a letter to them and they said that those are their own product. So they said that they are not going to release it. So that's why I'm asking you whether California State Bar knows how to ask.

Mercury News| 05/01/2004 | Judge guilty of ticket-fixing scheme
Posted on Sat, May 01, 2004

Judge guilty of ticket-fixing scheme

JURY'S DECISION MEANS LOSS OF SEAT ON BENCH, POSSIBLE PRISON TIME

By David E. Early and John Woolfolk
Mercury News

Nine times Judge William Kelsay read aloud the criminal counts against a fellow judge accused of fixing tickets for friends and sports figures. Nine times the word ''guilty" rang out Friday, sounding a death knell to William R. Danser's nine-year career on the bench.

Convicted of one felony count of ''conspiracy to pervert and obstruct justice" and eight related misdemeanors, Danser took the ultimate legal fall: losing his $139,000-a-year judgeship and the right to practice law.

The jury of six men and six women took about four hours to hand down the nine convictions against the Santa Clara County Superior Court judge.

''These things are never easy, but it was not a real difficult verdict to reach," said jury foreman Dennis Deisenroth, 61, a sports copy editor for the Mercury News. ''It was just fact after fact after fact. He just did too many favors."

Danser, 50, and former Los Gatos detective Randy Bishop were alleged conspirators in a scheme to fix tickets for members of the Sharks, the Earthquakes and a number of personal and influential friends in the Los Gatos social set. Often the pending traffic charges were dismissed without anyone having to appear in court.

Bishop, who has since left the Los Gatos force, has pleaded no contest to all charges against him, including conspiracy to obstruct justice.

On May 24, Kelsay will have a sentencing conference with Bishop and Danser. Danser could face up to three years in prison.

Of all the 29 tickets presented during the month-long trial in Santa Clara, Deisenroth and another juror said they found the drunken-driving case of Anna Marie Keane particularly compelling evidence of the most serious charge, felony conspiracy to obstruct justice.

Danser, who did not usually hear such cases, transferred Keane's-case from a Palo Alto judge known for stiff sentences into his courtroom in San Jose at Bishop's request. Danser then gave the 34-year-old Los Altos hairdresser the lightest possible sentence: no jail.

"The Keane case was particularly disturbing," said juror Don Crede, 63. "We looked into the relationships there and determined it had to be a conspiracy in which he was involved. By his actions, he showed he knew what was going on."

Defense attorney Ken Robinson tried to show that Danser was duped by Bishop, a charismatic, award-winning police officer. He judge dismissed tickets, the defense admitted, but only because Danser believed that Bishop was obtaining permission to dismiss them from the police agencies that issued them.

Danser declined to comment as he left the courtroom with Robinson, but stood by as his attorney said

http://www.mercurynews.com/mld/mercurynews/news/8566320.htm

he might consider an appeal.

"I always respect a jury's verdict," said Robinson, "but naturally, I'm disappointed." Robinson said that Danser never should have been prosecuted in a criminal court. Any suspected misbehavior, he said, should have been handled by the panel set up for it, the state Commission on Judicial Performance.

However, Danser's felony conviction negates the need for the commission's pending disciplinary proceeding in July on whether Danser should be removed from the bench for violating California's code of judicial ethics.

Under the state Constitution, a judge is immediately suspended without pay after being convicted of a felony. He is automatically kicked off the bench once a conviction becomes final, usually after any appellate process.

Victoria Henley, chief counsel of the judicial panel, declined to comment on whether the July hearing will be scratched. But Danser's attorney for the commission hearing, James Murphy, conceded this week there would not be a need in the event of a felony conviction.

"Felonies," said Murphy, "are the death knell."

Danser is also disbarred and cannot reapply to practice law for 10 years.

"Everything that needed to be said about this case was said in the courtroom," said prosecutor David Pandori. The deputy district attorney had grilled Danser for more than five hours, getting him to admit on the stand to fixing more than two dozen tickets for sports celebrities, friends, relatives of co-workers and pals with the Los Gatos Little League.

But after a clean sweep against the judge, whom Pandori scoffed at throughout the proceedings, the prosecutor said: "We intend to keep the case inside the courtroom."

The events leading up to the verdicts began at about 2 p.m. Friday, when the jury notified bailiff Bruce Martin that they were ready. All parties were called and arrived at the Santa Clara courthouse within about 30 minutes, except Danser. Finally the judge arrived alone and took a seat next to his lawyer.

As Kelsay read each guilty verdict, a blue-suited Danser looked straight ahead with his fingers interlaced, his thumbs bobbing. When it was over, Robinson moved his face close to his client's and whispered, "I'm so sorry."

Because Danser admitted to dismissing the tickets, his only his only defense was that he did nothing in concert with Bishop, but had been repeatedly fooled by the former cop. That Danser stubbornly testified that he saw no problem with fixing tickets for athletes and friends, is what seemed to go down hard with the jury.

"Looking at it in terms of justice for all," said Crede, "it was not available to all of us."

Deisenroth said clearly Danser was giving people breaks not available to everyone.

"What's good for one person has got to be good for every person or it doesn't work," Deisenroth said.
"Being a judge, he's got to know his things."

Mercury News Staff Writers Dan Reed and Howard Mintz contributed to this report. Contact David E. Early at deary@mercurynews.com or (408)920-5836.

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